Supreme Court, U.S.
FILED
SEP 26 1994
OFFICE OF THE CLERK

No. 94-81

In the Supreme Court of the United States

OCTOBER TERM, 1994

GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS & AUTOMOTIVE EMPLOYEES OF CONTRA COSTA COUNTY, LOCAL NO. 315, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

FREDERICK L. FEINSTEIN
General Counsel

LINDA SHER
Acting Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

JOHN EMAD ARBAB
Attorney
National Labor Relations Board
Washington, D.C. 20570

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the court of appeals properly upheld the National Labor Relations Board's determination that petitioner engaged in secondary activity violative of Section 8(b)(4)(B) of the National Labor Relations Act, 29 U.S.C. 158(b)(4)(B), by picketing and handbilling a neutral employer's rail terminal at locations other than the gate reserved exclusively for the use of the primary employer to the labor dispute.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	10
Conclusion	18

TABLE OF AUTHORITIES

Cases:

Building & Construction Trades Council of New Orleans (Markwell & Hartz, Inc.), 155 N.L.R.B. 319 (1965), enforced, 387 F.2d 79 (5th Cir. 1967), cert. denied, 391 U.S. 914 (1968)	14
International Ass'n of Iron Workers Local 433 v. *NLRB*, 598 F.2d 1154 (9th Cir. 1979)	14
International Bhd. of Electrical Workers v. *NLRB*, 341 U.S. 694 (1951)	13
International Longshoremen's Ass'n v. *Allied Int'l, Inc.*, 456 U.S. 212 (1982)	16
J.F. Hoff Electric Co. v. *NLRB*, 642 F.2d 1266 (D.C. Cir. 1980), cert. denied, 451 U.S. 918 (1981)	16
Kinty v. *United Mine Workers*, 544 F.2d 706 (4th Cir. 1976), cert. denied, 429 U.S. 1093 (1977)	14
Local 32B-32J, Service Employees Int'l Union (The Dalton Schools), 248 N.L.R.B. 1067 (1980)	13
Local 761, Int'l Union of Electrical Workers v. *NLRB*, 366 U.S. 667 (1961)	8, 9, 11, 12
NLRB v. *Denver Building & Construction Trades Council*, 341 U.S. 675 (1951)	13, 16
Sailors' Union of the Pacific (Moore Dry Dock), 92 N.L.R.B. 547 (1950)	8
Seafarers Int'l Union v. *NLRB*, 265 F.2d 585 (D.C. Cir. 1959)	14

Cases—Continued: Page

United Steelworkers of America v. *NLRB*, 376 U.S. 492 (1964) 9, 12, 13

Universal Camera Corp. v. *NLRB*, 340 U.S. 474 (1951) .. 15

Statutes:

National Labor Relations Act, 29 U.S.C. 151 *et seq.*:

§ 8(b)(4), 29 U.S.C. 158(b)(4) 7

§ 8(b)(4)(i)(B), 29 U.S.C. 158(b)(4)(i)(B) 7

§ 8(b)(4)(ii)(B), 29 U.S.C. 158(b)(4)(ii)(B) 7

§ 8(b)(4)(B), 29 U.S.C. 158(b)(4)(B) 10, 16

In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-81

GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS & AUTOMOTIVE EMPLOYEES OF CONTRA COSTA COUNTY, LOCAL NO. 315, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A41) is reported at 20 F.3d 1017. The decision and order of the National Labor Relations Board (Pet. App. B1-B5), including the decision of the administrative law judge (Pet. App. B6-B115), is reported at 306 N.L.R.B. 616.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 1994. The petition for a writ of certiorari was

filed on June 30, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) operates a rail terminal in Richmond, California. Pet. App. B10. Approximately 40 percent of the rail traffic at the Richmond terminal consists of "intermodal" freight, which is transported in trailers and containers (collectively referred to as vans) on flatcars. *Id.* at B11. The process of lifting vans onto and off of railroad flatcars at the terminal is referred to as "ramping" and "deramping" of intermodal freight. For some time, that process was performed by Santa Fe Terminal Services, Inc., a wholly owned subsidiary of Santa Fe, whose employees were represented by petitioner. Effective July 1, 1990, however, Santa Fe subcontracted the ramping and deramping work to Piggyback Services, Inc. (Piggyback). Under the subcontract, Piggyback performed those services for Santa Fe on a fee-per-lift basis, using heavy equipment furnished by Santa Fe. Petitioner did not dispute Santa Fe's right to subcontract the ramping and deramping operation to Piggyback, but believed that Piggyback had breached a promise to hire Santa Fe Terminal Services, Inc., employees to perform that work. *Id.* at B15-B16, B23-B24.

Piggyback performed ramping and deramping services for Santa Fe in an area on the north side of the rail yard known as the "intermodal" or "ramp" area. Pet. App. B12. All incoming and outgoing rail traffic, approximately 60 trains daily, used a single "main line" track at the east end of the terminal. *Id.* at B11, B12. Trucks of Santa Fe's customers, used to haul approximately 600 vans to and from the terminal daily, entered and exited

the rail yard at an entrance along the southern boundary. *Id.* at B14-B15. Santa Fe's employees and its customers' truckers worked with Piggyback's employees in handling of intermodal freight. Santa Fe's assistant train masters gave Piggyback's coordinators information about track assignments and location of flatcars, while Santa Fe employees worked with Piggyback employees to switch railroad cars into and out of the intermodal area of the terminal. *Id.* at B20, B21. At the checkpoint at which all truckers entering or exiting the rail yard were required to stop, Piggyback employees inspected all vans for damage and gave the truckers information. *Id.* at B16-B18. With the exception of the ramping and deramping service provided by Piggyback, Santa Fe's workforce of approximately 200 employees performed all of the work required to operate the terminal.[1] *Id.* at B10.

2. From July 2 until August 29, 1990, when petitioner settled its dispute with Piggyback, petitioner picketed and distributed handbills at the Santa Fe terminal to protest Piggyback's refusal to hire petitioner's members.

a. Beginning on July 2 and continuing throughout the period of the dispute, petitioner picketed at Gate 1, which provided general access to the terminal. The picketers carried signs that read: "PIGGYBACK SERVICES LOCK OUT UNFAIR TO TEAMSTERS LOCAL 315." Pet. App. B14, B24-B25. Before the picketing began at Gate 1, Santa Fe had posted a sign there, stating that Gate 1 was reserved exclusively for the use of

---

[1] Those employees included engineers, switching crews, mechanical employees, track maintenance employees, and clerical employees, represented by seven different railroad craft unions. Pet. App. B10.

Piggyback's employees, visitors, customers, and suppliers, and that Santa Fe's employees, visitors, customers, and suppliers were to enter the terminal through Gates 2 and 3. *Id.* at B24. Piggyback's employees crossed the picket line at Gate 1, and Santa Fe's employees used other gates and continued working. Gov't C.A. Br. 10; Tr. 455, 553.

b. Beginning on July 12 and continuing until August 29, petitioner expanded its picketing to include Gate 3, the entrance used by all truck drivers hauling intermodal freight to and from the terminal for Santa Fe's customers.[2] Pet. App. B16, B25, B26. Before that picketing began, Santa Fe had posted a sign at Gate 3, stating that it was reserved exclusively for the use of its employees, visitors, customers, and suppliers, and that Piggyback's employees, visitors, customers, and suppliers were to enter the terminal through Gate 1. *Id.* at B25. In addition to carrying signs, picketers at Gate 3 distributed handbills to the truck drivers entering the terminal, which read, in pertinent part: "[Petitioner] is asking you to respect our picket line against [Piggyback]. If you are here to pick up or drop a trailer, you will be dealing directly with employees of [Piggyback]. We are asking you not to do that." *Id.* at B25-B26. Unionized truck drivers, including drivers employed by United Parcel Service (UPS), Santa Fe's largest intermodal freight customer at the terminal accounting for 25 percent of Santa Fe's intermodal freight business there, *id.* at B26 n.3, refused to cross the picket line at Gate 3. To maintain the flow of inter-

---

[2] Trucks picking up and delivering intermodal freight at the terminal were owned and operated by Santa Fe's customers. Pet. App. B16. Neither Santa Fe's customers nor the independent truckers had any contractual relationship with Piggyback. *Ibid.*

modal freight, Santa Fe established a drop-off location on a public street near Gate 3,[3] and arranged for other trucking companies to transport its customers' freight between the drop-off location and the terminal.[4] *Id.* at B28.

c. Santa Fe's employees continued to report for work. On August 8, petitioner sent identical letters to the presidents of the seven unions representing Santa Fe's employees (see note 1, *supra*), requesting them to "notify your Santa Fe Railroad members * * * that each person has the right to honor a picket line without jeopardizing their jobs." Pet. App. B35. Petitioner's letter sought the unions' "assistance and cooperation in informing your members * * * to please honor our picket line if they come in contact with our picketers." *Id.* at B36.

d. On August 10 and continuing until August 29, petitioner extended its picketing and handbilling activities to Gate 5, the entrance to the terminal near a point known as Indian Crossing, where the single track used by all incoming and outgoing rail traffic intersects a roadway a few hundred yards from the east end of the terminal. Pet. App. B11, B28-B29. Santa Fe had posted a sign at Gate 5 reserving it exclusively for the use of its employees, visitors, customers, and suppliers, and directing Piggyback's employees, visitors, customers, and suppliers to use Gate 1. *Id.* at B25. In addition to carrying signs, picketers at Gate 5 distributed a handbill addressed "TO EMPLOYEES WORKING IN SANTA

[3] On August 14, Santa Fe moved the drop-off site to a vacant lot about one and one-half miles from the terminal. Pet. App. B51.

[4] UPS transported its own freight between the terminal and the drop-off point by assigning supervisors to drive the trucks. Pet. App. B28.

FE RAILWAY YARD." The handbill requested Santa Fe employees "to refuse to deliver railcars to Piggy Back employees to work on, refuse to work with Piggy Back employees, and refuse to perform switching services to enable Piggy Back employees to do their work." The handbill also stated that petitioner was "not asking you to cease any work unrelated to Piggy Back's day-to-day operations." *Id.* at B29.

On August 10, picketers at Gate 5 began a practice of gathering near the track at Indian Crossing to hold up or wave their signs when trains carrying one or more flatcars of intermodal freight approached the terminal. Pet. App. B38. On the same date, picketers stationed at Gate 1 began to picket in the same manner around such trains on two spur tracks at the west end of the terminal. *Id.* at B44. Santa Fe's train crews frequently stopped their trains when they encountered picketers. When that occurred, Santa Fe's supervisors replaced the crews and brought the trains through the picket lines. Gov't C.A. Br. 12; Tr. 207-209, 503.

e. On August 24 and continuing until August 29, petitioner extended its picketing and handbilling to Gate 2, which provided access to an office building occupied by Santa Fe and Piggyback, and to Gates 4 and 4(b), adjacent entrances to the rail yard.[5] Pet. App. B14, B15, B48 & n.14. Santa Fe had posted signs at Gates 2 and 4 reserving them exclusively for the use of its employees. The handbill petitioner distributed at Gates 2 and 4 was in all relevant respects identical to the handbill it was distributing at Gate 5. *Id.* at B25, B49.

---

[5] Santa Fe opened Gate 4(b) on August 24, but did not reserve it for the exclusive use of its employees, visitors, customers, and suppliers, as it had Gates 2, 3, 4, and 5. Santa Fe closed Gate 4(b) on August 25. Pet. App. B48 n.14.

Beginning on the evening of August 24, Santa Fe's employees refused to cross petitioner's picket lines at Gates 2, 4, 4(b), and 5. Santa Fe continued to operate the terminal by using supervisory personnel. Pet. App. B52-B53. On the evening of August 27, Santa Fe's employees returned to work, pursuant to a court order. *Id.* at B54-B55. The following evening, August 28, petitioner began to picket at the drop-off site Santa Fe had established for UPS and its other intermodal freight customers (see page 5, *supra*) and to distribute handbills there identical to the handbills it was distributing at Gate 3. *Id.* at B52.

3. The General Counsel of the National Labor Relations Board (Board) issued a complaint against petitioner alleging that the picketing and handbilling detailed above, other than that at Gate 1, violated Section 8(b)(4)(i)(B) and (ii)(B) of the National Labor Relations Act (Act),[6] because an object of the picketing and handbilling was to force Santa Fe and other neutral employers to cease doing business with Piggyback. Pet. App. B55. After a hearing, an administrative law judge (ALJ) concluded that petitioner's picketing other than

[6] Section 8(b)(4) of the Act, 29 U.S.C. 158(b)(4), provides, in relevant part, that it shall be an unfair labor practice for a union:

> (i) to engage in, or to induce or encourage any individual employed by any person * * * to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person * * * where in either case an object thereof is * * * (B) forcing or requiring any person * * * to cease doing business with any other person * * *: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

that at Gate 1 and its handbilling were unlawful under Section 8(b)(4)(B). Pet. App. B106-B108.

The ALJ applied the criteria for evaluating the lawfulness of common-situs picketing set forth in *Sailors' Union of the Pacific (Moore Dry Dock)*, 92 N.L.R.B. 547, 549 (1950): (1) whether the picketing is strictly "limited to times when the situs of dispute [i]s located on the secondary [employer's] premises"; (2) whether "the primary employer [is] engaged in [its] normal business at the situs"; (3) whether the picketing "take[s] place reasonably close to the situs"; and (4) whether the picketing "clearly disclose[s] that the dispute [i]s only with the primary employer." Pet. App. B61-B62 (quoting *Local 761, Int'l Union of Electrical Workers* v. *NLRB*, 366 U.S. 667, 677 (1961) (*General Electric*)). The ALJ observed that a neutral employer may establish a separate gate for the exclusive use of the employees of the primary employer to a labor dispute, and that, when the neutral employer has done so, "the union, as part of its obligation to minimize the secondary effects of common situs picketing, must * * * avoid extending its appeal to those jobsite access points used only by neutral employers and their employees." *Id.* at B75-B76. Under *Moore Dry Dock*, the ALJ explained, "picketing that extends beyond the gate established for the primary employer and its employees and suppliers * * * creates the inference that the union is pursuing unlawful, secondary objectives." *Id.* at B76.

The ALJ found that an inference of secondary objectives was warranted here, because petitioner, although fully aware of Santa Fe's reserved gate system, nevertheless extended its picketing well beyond Gate 1 to include access points to the terminal used exclusively by employees of Santa Fe and its customers, which were neutral to the dispute between petitioner and Piggyback.

Pet. App. B76-B78. The ALJ also found that petitioner's August 8 letter to the presidents of the seven unions that represented Santa Fe's employees, and the handbills petitioner distributed at the reserved gates, further demonstrated that its picketing had an unlawful secondary object. *Id.* at B78-B81. Finally, the ALJ found that petitioner's handbilling was also unlawful because it was "inextricably linked" with the unlawful picketing campaign and, alternatively, because the handbilling itself had an unlawful secondary objective. *Id.* at B105-B106.

The ALJ rejected petitioner's contention that the lawfulness of its picketing should have been evaluated, not under the *Moore Dry Dock* criteria, but under the "related work" principle articulated in *General Electric* and *United Steelworkers of America* v. *NLRB*, 376 U.S. 492 (1964) (*Carrier Corp.*). Pet. App. B55-B56, B74-B75. The ALJ explained that "whether the work of Santa Fe or the other neutral employers doing business with Santa Fe was 'related' to the normal operations of Piggyback" was not relevant to the lawfulness of petitioner's picketing, because "the applicability of the 'related work' principle depends on whether the picketing takes place at the primary employer's premises, whereas here it took place at the premises of the neutral employer." *Id.* at B74-B75.

The ALJ also rejected petitioner's contention that its picketing was lawful because Santa Fe and its customers were "suppliers" of Piggyback. Pet. App. B98-B100. The ALJ recognized that, under Board law, a union may picket a gate at a common situs used by the primary employer's suppliers. *Id.* at B86-B94. The ALJ explained, however, that in this case petitioner's picketing was "foreseeably intended" to have an impact on the business of neutral employers, because the intermodal freight was

not used only by Piggyback, but was used primarily by other employers. *Id.* at B99.

The Board affirmed the ALJ's findings and conclusions, and, with a minor modification not relevant here, adopted the cease-and-desist order recommended by the ALJ. Pet. App. B1-B5.

4. The court of appeals enforced the Board's order. Pet. App. A1-A41. The court, in agreement with the Board, held that the lawfulness of petitioner's conduct was governed by *Moore Dry Dock* rather than the "related work" rule of *General Electric* and *Carrier Corp.* *Id.* at A20. The court observed that it could "conceive of no principled basis for expanding the standards of *General Electric* and *Carrier* to encompass the situation presented here, i.e., picketing at sites on the premises of a neutral employer, which sites are not reasonably proximate to the struck facility." *Id.* at A27. The court explained that, if adopted, petitioner's submission—that the "interdependency" between the operations of Piggyback and Santa Fe justified its appeal to neutral employees and customers of Santa Fe—"would eviscerate the intent of Congress to shield neutral employers from labor disputes that are not their own." *Id.* at A20-A21, A27. The court of appeals also deemed "amply supported by the record" the Board's finding that Santa Fe and its customers were not "suppliers" of Piggyback. *Id.* at A34. Finally, the court held that substantial evidence supported the Board's conclusion that petitioner's picketing, considered in light of its handbilling, violated Section 8(b)(4)(B). *Id.* at A40-A41.

ARGUMENT

1. Petitioner contends (Pet. 17-22) that the lawfulness of its picketing should have been evaluated under the principles announced in this Court's decision in *General*

Electric rather than under the Board's *Moore Dry Dock* test. According to petitioner, *General Electric*'s approach is not confined to picketing at a situs owned by the employer with which the union has a primary dispute. Petitioner also argues that, judged under the *General Electric* standard, its picketing was lawful. Neither contention is correct.

a. In *General Electric*, the union picketed the premises of the company with which it had a labor dispute at two locations: a gate used by the primary employer, and a gate reserved exclusively for independent contractors and their employees who were regularly working on those premises. The Court approved the Board's application of the *Moore Dry Dock* standards to the latter picketing insofar as the work done at the primary employer's premises by the secondary employers was "unconnected to the normal operations of the struck employer." 366 U.S. at 680. In those circumstances, the Court held, the primary employer may erect a gate and direct that the secondary employers enter the primary employer's premises only through that gate; and, if the union pickets at the reserved gate, the Board may find that the union has failed to confine its picketing as close as possible to the situs of the primary employer's operations. On the other hand, the Court held, if employees of the secondary employer are performing "work necessary to the normal operations" of the primary employer, *id.* at 682, the union may picket the secondary employer at any gate used by it and its employees. *Id.* at 680-681.

Petitioner contends (Pet. 20) that "the truck drivers bringing vans to Piggyback, and the Santa Fe employees working directly with Piggyback at the job situs were performing 'work necessary to the normal operations' of Piggyback." Accordingly, petitioner suggests that,

under *General Electric*, petitioner was not required to confine its picketing and handbilling activity to the gate reserved for Piggyback and its employees and suppliers, and that the Board erred in inferring a secondary objective based on the third *Moore Dry Dock* factor: that, to qualify as lawful primary activity, "the picketing take place reasonably close to the situs" of the primary dispute. See Pet. App. B2, B62, B75-B78.

General Electric, however, is inapplicable to picketing of a situs where the union's primary dispute is not with the employer operating the plant or other business on the premises, but with an independent contractor that the employer has engaged to perform work for it. In *General Electric*, the Court made clear that the issue before it was "whether the Board may apply the [*Moore*] *Dry Dock* criteria so as to make unlawful picketing at a gate utilized exclusively by employees of independent contractors who work *on the struck employer's premises*." 366 U.S. at 680 (emphasis added). Only in the limited context of picketing at the primary employer's premises did the Court hold that "if the duties of those [neutral] employees [are] connected with the normal operations of the [struck] employer, picketing directed at them [is] protected primary activity, but if their work [is] unrelated to the day-to-day operation of the [struck] employer's plant, the picketing [is] an unfair labor practice." *Carrier Corp.*, 376 U.S. at 497-498 (explaining the *General Electric* decision).[7]

[7] In *Carrier Corp.*, the Court applied the *General Electric* rule to picketing at the rail entrance gate to Carrier's struck plant that was located on a right of way owned by the railroad that supplied Carrier with services related to its daily operations. While that picketing was technically off of the primary employer's premises, the Court found *General Electric* applicable, because the fence surrounding the railroad's property was a continuation of the

To apply the *General Electric* related-work rule to the context here would permit a union to "enmesh all customers of * * * contractors" in disputes between the union and the primary employer. *Local 32B-32J, Service Employees Int'l Union (The Dalton Schools)*, 248 N.L.R.B. 1067, 1069 (1980). There is always likely to be some "similarity or relatedness in the work of the primary struck *supplier* and a portion of the work done by its *customer*." *Ibid.* Thus, petitioner's approach would unreasonably allow the expansion of primary disputes to neutral employers. Moreover, if *General Electric*'s related-work rule were applied to picketing at the premises of employers served by independent contractors with which the union has a dispute, it would effectively nullify the Court's holding in *NLRB* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 689-690 (1951). In that case, the Court held that, notwithstanding the close relationship between the general contractor and the various subcontractors on a construction project, each was a neutral in a labor dispute involving the other and was thus entitled to the protection of the Act's secondary boycott provisions. Accord *International Bhd. of Electrical Workers* v. *NLRB*, 341 U.S. 694, 699-700 (1951). Although petitioner asserts (Pet. 25 n.4) that the relationship between Piggyback and the neutral employers here differs from the relationship between the various contractors on a construction site, it offers no principled basis for distinguishing the two situations.

---

fence surrounding the Carrier plant, and there was no other place where the union could have brought home to the railroad workers servicing Carrier its dispute with Carrier. 376 U.S. at 500. In light of the establishment of Gate 1 for Piggyback's use, those considerations are not present here.

In light of those considerations, the Board reasonably has concluded that, where, as here, the primary employer is working not on its own premises, but on the premises of a neutral employer or one shared in common by a number of neutral employers, the union's right to engage in lawful primary activity is sufficiently protected by permitting it to picket only reasonably close to the location of the situs of the primary dispute. In this case, that location was Gate 1, the gate reserved for Piggyback and its employees and suppliers. In similar situations, the courts of appeals have uniformly held that the lawfulness of the union's picketing is to be determined under the *Moore Dry Dock* criteria, not the *General Electric* rule. See *Kinty* v. *United Mine Workers*, 544 F.2d 706, 713-715 (4th Cir. 1976), cert. denied, 429 U.S. 1093 (1977); *International Ass'n of Iron Workers Local 433* v. *NLRB*, 598 F.2d 1154, 1156 n.3 (9th Cir. 1979); *Building & Construction Trades Council of New Orleans (Markwell & Hartz, Inc.)*, 155 N.L.R.B. 319, 325-326 (1965), enforced, 387 F.2d 79 (5th Cir. 1967), cert. denied, 391 U.S. 914 (1968).[8]

b. Even if *General Electric* were found applicable here, petitioner's conduct would not be lawful primary picketing. Petitioner's appeals to Santa Fe's employees and those of other neutral employers were not confined to the narrow purpose of persuading them to refuse to work with Piggyback's employees. Rather, the ALJ

[8] In *Seafarers Int'l Union* v. *NLRB*, 265 F.2d 585 (D.C. Cir. 1959), a case cited by petitioner (Pet. 23 n.3) that was decided before *General Electric*, the court emphasized a similar distinction, observing that "[the] difference in pressure, between that which occurs, somewhat indirectly, when another employer's premises are picketed and that which occurs when a neutral employer's own premises are picketed, is the rationale which must govern the interpretation of Section 8(b)(4)." 265 F.2d at 591.

specifically found that petitioner's objective in picketing and handbilling at the gates other than Gate 1 was "to attempt to enmesh the neutral employers in its dispute with Piggyback by appealing to the neutrals' employees to respect its picket line and, *in the case of Santa Fe's employees*, by *further* appealing to them to refuse to do that part of their daily work which involved Santa Fe's intermodal freight operations, *if they chose to disregard* [*petitioner's*] *picket line and go to work.*"[9] Pet. App. B80-B81 (emphasis added). That finding was not disturbed by the court of appeals, and it does not warrant review by this Court. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 490-491 (1951). Under the ALJ's finding, it is clear that one of the goals of petitioner's conduct was to persuade *all* of Santa Fe's employees, and those of other neutral employers doing business with Santa Fe, to refuse to cross its picket lines.[10]

---

[9] Petitioner's statement (Pet. 13-14) that the Board "did not quarrel" with its contention that it had confined its appeals to neutral employees who performed work "directly related to and necessary for Piggyback's operations" is incorrect.

[10] The ALJ's finding is amply supported by the record. For example, the signs carried by petitioner's pickets at all gates stated that Piggyback was "unfair" to petitioner (Pet. App. B25), thereby making a general appeal to the neutral employees not to cross the picket line at all. The handbills distributed to the truckdrivers of Santa Fe's customers entering Gate 3 to pick up or drop a trailer similarly requested them "to respect our picket line" against Piggyback (*id.* at B25-B26); the union-represented drivers, including those employed by UPS, Santa Fe's largest customer for intermodal freight, responded by refusing to cross the picket line. *Id.* at B28. In addition, before petitioner extended its picketing and handbilling to Gate 5 (the entrance to the rail yard at Indian Crossing), it wrote to the unions representing Santa Fe's employees requesting them to inform those employees that they

Such a refusal to cross the picket lines would naturally disrupt Santa Fe's entire operation at the terminal, including its movement of nonintermodal freight, as to which Piggyback played no role whatever. Even under petitioner's own theory, petitioner was not privileged to appeal to the neutral employer's employees to refrain from work that was wholly unrelated to Piggyback's operation. Petitioner's picketing was unlawful on that basis alone, because a single unlawful secondary object brings a union's activity within the prohibition of Section 8(b)(4)(B), even if the activity has other, lawful objects. *International Longshoremen's Ass'n* v. *Allied Int'l, Inc.*, 456 U.S. 212, 224 & n.21 (1982); *Denver Building & Construction Trades Council*, 341 U.S. at 689.

2. Petitioner also contends (Pet. 23) that, quite apart from its claim that *General Electric* applies to the facts of this case, the Board lacks a reasonable basis for distinguishing between picketing directed at the suppliers of a primary employer at a common situs, on the one hand, and petitioner's picketing of Santa Fe and its customers, whose employees "perform work on the situs necessary to the normal operations of the primary employer," on the other. There is no merit to that contention. A "supplier" provides material for the exclusive use of the primary employer; accordingly, the disruption caused by picketing of a supplier is confined to the primary employer itself. Pet. App. A32-A33, B99; *J.F. Hoff Electric Co.* v. *NLRB*, 642 F.2d 1266, 1275 (D.C. Cir. 1980), cert. denied, 451 U.S. 918 (1981). In contrast, the intermodal freight "supplied" to Piggyback's employees by Santa Fe and its customers' employees was

---

could honor petitioner's picket line without jeopardizing their jobs. *Id.* at B34-B36.

not provided for Piggyback's exclusive use; it was provided to Piggyback as a step in the transportation of the freight by Santa Fe to its final destination.[11] Pet. App. B99. Accordingly, the disruption caused by picketing directed at Santa Fe and its customers was not confined to the primary employer (Piggyback), but was intended to interfere with the business of neutral employers. Indeed, the picketing ultimately disrupted not only Piggyback's operation but the functioning of the entire terminal. Thus, as the facts of this case illustrate, the Board reasonably distinguishes between picketing of the type conducted by petitioner and picketing of a supplier to the primary employer.

[11] As the ALJ noted, "the common sense notion of supplies for Piggyback's operation would be cranes, tractors, oil and gas, office supplies, maintenance services and labor, and not the intermodal freight delivered to Piggyback's employees, inasmuch as that freight was not delivered to Piggyback for its employees to 'use' in the performance of their duties, but was delivered so that it would be transported by employees of employers, other than Piggyback, to its ultimate destination." Pet. App. B99.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FREDERICK L. FEINSTEIN
General Counsel

LINDA SHER
Acting Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

JOHN EMAD ARBAB
Attorney
National Labor Relations Board

SEPTEMBER 1994